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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,045	01/17/2002	Ebba A. Hansen	53394.000582	1178

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HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006-1109

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,045

Applicant(s)

HANSEN, EBBA A.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 and 17-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 16 and 27-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 19, 2005 has been entered.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification does not support the term "substantially continuous tow fibers" as claimed.

The amendment filed October 19, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the applicant has amended the claims to recite substantially continuous tow fibers. The applicant's arguments are directed toward "substantially continuous tow fibers" in relative to the size of the article. This argument and the claim language that it supports are

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considered new matter because the subject matter is not supported by the originally filed specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 7, 16 and 27 – 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pieniak et al. (US 6,123,694) and further in view of Goldman et al. (US 5,562,646)

With reference to claim 1, Pieniak et al. (hereinafter "Pieniak") discloses an absorbent article having a longitudinal dimension and a lateral dimension comprising a topsheet (30) a backsheet (26), whereby the topsheet and the backsheet form a first waist region, a second waist region longitudinally opposite the first waist region, and a crotch region therebetween (figure 2) and an absorbent core (28) at least partially disposed between the topsheet and the backsheet as set forth in figure 3.

The difference between Pieniak and claim 1 is the provision that the absorbent core is a laminate core comprising at least four layers.

Goldman et al. (hereinafter "Goldman") discloses an absorbent laminate core (20) comprising at least four layers (32,36,40,44,48,52) whereby two of the layers are outer layers comprising an upper layer (36) and a lower layer (52), said upper and lower layers independently comprising a tissue or a tissue-like material (col. 33, lines 50 – 57) and one of the inner layers (44,48) disposed between the upper layer and the lower layer is a central fibrous layer containing from about 30 to about 50% by weight super absorbent polymer (col. 34, lines 36 – 47) and substantially continuous tow fibers (col. 28, lines 35 – 36) whereby the absorbent laminate core comprises at least one additional inner layer disposed between the upper layer and the lower layer, the additional inner layer being selected from the group consisting of a fluid acquisition layer, a distribution layer, an additional fibrous layer optionally containing super absorbent polymer, a wicking layer, a storage layer, and combinations and fragments thereof as set forth in col. 33, lines 50 – 61.

It would have been obvious to one of ordinary skill in the art to modify the core of Pieniak by providing the absorbent laminate core of Goldman because the absorbent laminate core of Goldman provides an absorbent member having good wet integrity as taught by Goldman in col. 1, lines 14 – 18.

As to claim 2, Pieniak discloses an absorbent article further comprising at least one fastening element attached to a lateral edge of the first waist region and one or more target devices attached to the article in the second waist region, where at least one fastening element and the one or more target devices are capable of attaching to one another, the one or more target devices being located so that the first waist region

and the second waist region of the garment may be joined to one another to secure the garment on a wearer as set forth in figure 1.

With reference to claim 3, Pieniak discloses an absorbent article further comprising elastic leg gathers (32) comprising one or more elastic materials (38) disposed adjacent the lateral edge of the crotch region, and standing leg gathers disposed on the topsheet adjacent the lateral edge of the crotch region as set forth in figure 3.

Regarding claim 4, Pieniak discloses an absorbent article wherein the at least one fastening element comprises a hook portion of a hook and loop fastener and the one or more target devices comprise the loop portion of a hook and loop fastener as set forth in col. 4, lines 26 – 33.

As to claim 5, Pieniak discloses an absorbent article wherein the at least one fastening element is an adhesive tape and the one or more target devices comprise a tape receiving surface as set forth in col. 4, lines 15 – 27.

With respect to claim 6, Pieniak discloses an absorbent article wherein the at least one fastening element is comprised of a pair of laterally extending tabs disposed on the lateral edges of the first waist region, whereby the laterally extending tabs each include at least one fastening element as set forth in col. 4, lines 15 – 33 and in figures 1 – 2.

Regarding claim 7, Goldman discloses an absorbent article wherein the absorbent laminate comprises just one additional inner layer disposed between the upper layer and the lower layer, and the additional inner layer is a fluid acquisition layer (40) as set forth in col. 34, lines 17 – 19.

Goldman discloses that it is important for the additional inner layer (40), which is positioned between the upper and lower layers, to allow acquired body fluids to pass rapidly therethrough, just as a fluid acquisition layer, in col. 34, lines 17 – 19.

As to claim 16, Goldman discloses an absorbent article wherein the absorbent laminate core comprises an upper layer (36), a lower layer (52), a central fibrous layer disposed between the upper layer and the lower layer (44,48) and an additional inner layer (40) disposed between the central fibrous layer and the upper layer, the additional inner layer being selected from a fluid acquisition layer, or a combination of a wicking and distribution layer as set forth in col. 34, lines 17 – 19.

With reference to claim 27, Goldman discloses an absorbent article wherein the central fibrous layer comprises from about 50% to about 95% by weight super absorbent polymers (SAP), and has a SAP efficiency of at least 80% as set forth in col. 34, lines 36 – 47.

Regarding claim 28, see Goldman, col. 34, lines 32 – 35 and col. 23, lines 14 – 32.

The difference between Pieniak in view of Goldman and claim 29 is the provision that the central fibrous layer comprises fibers selected from the listed group.

Absent a critical teaching and/or unexpected result, the examiner contends that the claimed limitation is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

Regarding claim 30, Goldman discloses an absorbent article wherein the central fibrous layer further comprises up to 10% by weight wood pulp fibers as set forth in col. 24, lines 31 – 40 and in col. 34, lines 36 – 45.

With respect to claim 31, Goldman discloses an absorbent article wherein the central fibrous layer further comprises particulate additives as set forth on page 9, in paragraph 0087.

With reference to claim 32, absent a critical teaching and/or unexpected result, the examiner contends that the claimed limitation is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

As to claim 33, Goldman discloses an absorbent article wherein the particulate additives are selected from the listed group as set forth in col. 24, lines 53 – 65.

With respect to claims 34 – 45, see the preceding rejection of Pieniak in view of Goldman since claims 34 – 45 recite a method that would necessarily flow from the article claims 1 – 7, 16 and 24 – 33 as previously rejected.

Response to Arguments

Applicant's arguments filed October 19, 2005 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Goldman fails to teach a substantially continuous tow fiber, the examiner disagrees. By applicant's own admission, Goldman discloses the use of continuous tow fibers in col. 28, lines 35 – 36. The applicant provides arguments with respect to the length of the fibers disclosed by Goldman relative to the size of the article. However, this rationale and specific definition of the term "substantially continuous" is not supported by the originally filed specification. In fact, the term itself is not even mentioned in the originally filed specification. The examiner contends that the term "substantially" is a relative term that is not necessarily limited to correspond to the length of the diaper, but may correspond to any number of other elements. The applicant's arguments are not commensurate with the scope of the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Primary Examiner
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